

standards relating to the high priority data elements described above, as well as others such as those identified in the Grid Integration Project, the Commission will give those proposals considerable weight. However, even in the absence of a consensus proposal from GISB, the Commission intends to move ahead with this proceeding.

As noted above, comments must be filed no later than March 15, 1996, along with an implementation plan which ensures that implementation occurs by January 1, 1997. The Commission recognizes, however, that with respect to discrete elements of the ten high priority items, or other business practices, the industry may reach a consensus on specific standards before that date.<sup>8</sup> To the extent the industry reaches consensus, the Commission encourages voluntary implementation of those consensus standards.

An original and 14 copies of comments in response to this notice must be filed with the Commission no later than March 15, 1996. Comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 and should refer to Docket No. RM96-1-000.

By the Commission.

Lois D. Cashell,  
Secretary.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 161

RIN 1076-AC81

#### Navajo Partitioned Land Grazing Regulations

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs proposes to add Part 161 to 25 CFR to govern the grazing of livestock on the Navajo Partitioned Land (NPL) of the Navajo-Hopi Former Joint Use Area (FJUA) of the 1882 Executive Order reservation. The purpose of these regulations is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes.

<sup>8</sup>For example, in its October 18, 1995 letter, INGAA represents that it intends to submit to GISB a pipeline consensus draft addressing the minimum data elements and nomenclature for nominations and confirmations by December 1995.

**DATES:** Comments on these proposed rules must be submitted by January 2, 1996.

**ADDRESSES:** Send comments to Bureau of Indian Affairs, Division of Water and Land Resources, Room 4559, 1849 C Street N.W., Washington, DC 20240, or telephone number (202) 208-4004.

**FOR FURTHER INFORMATION CONTACT:** Robert Curley, (602) 871-5151, Ext. 5105, at the Navajo Area Office in Window Rock, Arizona.

**SUPPLEMENTARY INFORMATION:** As a result of the long-standing dispute between the Hopi Tribe and the Navajo Nation over beneficial ownership of the reservation created by the Executive Order of December 16, 1882, Congress passed the Act of July 22, 1958, 72 Stat. 403, which permitted the Navajo Nation and the Hopi Tribe to sue each other in federal court to resolve the issue. The Hopi Tribe initiated such a suit on August 1, 1958, in United States District Court for the District of Arizona in *Healing v. Jones*, 174 F. Supp. 211 (D. Ariz. 1959), (*Healing I*). The merits of the case were heard by a three judge panel of the United States District Court for the District of Arizona in *Healing v. Jones*, 210 F. Supp. 125 (D. Ariz. 1962) *aff'd* 373 U.S. 758 (1963), (*Healing II*) after the initial procedural challenges to the suit were dismissed in *Healing I*. The district court determined that while the Hopi Tribe had a right to the exclusive use and occupancy of a portion of the 1882 reservation known as District 6, it shared the remaining lands of the 1882 reservation in common with the Navajo Nation. Disputes between the two tribes continued over the right to use and occupy the 1882 reservation in spite of the district court's decision in *Healing II*, which was affirmed by the Supreme Court. In an attempt to resolve these ongoing problems, Congress enacted the Navajo-Hopi Settlement Act, 25 U.S.C. 640d-640d-31, which provided for the partition of the Joint Use Area of the 1882 reservation, excluding District 6, between the two tribes. The Act was amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, due to the dissatisfaction expressed by both tribes with the relocation process.

The Relocation Act Amendments added subsection (c) to 25 U.S.C. 640d-18. It required the Secretary of the Interior to complete the livestock reduction program contained in 25 U.S.C. 640d-18(a) within 18 months of its enactment. The new subsection also required that all grazing control and range restoration activities be coordinated and executed with the

concurrence of the tribe to which the land had been partitioned. In 1982, the U.S. District Court for the District of Arizona determined in *Hopi Tribe v. Watt*, 530 F. Supp. 1217 (D. Ariz. 1982), that the grazing regulations contained in Part 153 of 25 CFR were invalid with respect to the 1882 reservation partitioned to both the Navajo Nation and the Hopi Tribe. The court reached that conclusion because the regulations did not provide for the concurrence of the Navajo Nation or the Hopi Tribe as required by the Relocation Act Amendments. The district court's ruling was upheld by the Ninth Circuit Court of Appeals in *Hopi Tribe v. Watt*, 719 F.2d 314 (9th Cir. 1983).

As a result of the decision in *Hopi Tribe v. Watt, Id.*, the Bureau of Indian Affairs sought the written concurrence of the Navajo Nation for the regulations which are herein published. The concurrence of the Navajo Nation to these regulations was provided by the Resources Committee of the Navajo Nation Council pursuant to resolution No. RCAP-079-92 of April 29, 1992. Non-substantive, editorial changes have been made to the proposed regulations which were approved by the Navajo Nation.

These regulations are being issued to implement the Secretary of the Interior's responsibilities mandated by the Navajo-Hopi Settlement Act, as amended by the Relocation Act Amendments, and the previously cited federal court decisions. In 1982 Part 152 of 25 CFR was redesignated as Part 167 and Part 153 of 25 CFR was redesignated as Part 168. All grazing permits issued for the Joint Use Area under the old 25 CFR Part 152, some of which dated from 1940, were canceled within one year pursuant to the Order of Compliance issued on October 14, 1972, by the U.S. District Court of the District of Arizona in *Hamilton v. MacDonald*, Civ. 579-PCT. From 1973 through 1978 the Bureau of Indian Affairs did not issue grazing permits for the Joint Use Area because it was necessary to complete a census of the human and animal populations of the Joint Use Area (JUA) in conjunction with a calculation of the range's carrying capacity and stocking rates. However, in late 1977 the Joint Use Area Administrative Office of the Bureau of Indian Affairs at Flagstaff, Arizona, completed its inventory and began issuing annual grazing permits to the residents of the JUA. These interim permits were limited to one year by order of the federal district court. Since the 1982 ruling in *Hopi v. Watt*, 530 F.2d 1217 (1983), declaring that the pre-1982 regulations were invalid, the

Bureau of Indian Affairs has been subject to the provisions of the Navajo-Hopi Settlement Act, as amended, which require the development of new grazing regulations for the Navajo Partitioned Land with the concurrence of the Navajo Nation. These regulations are the product of that consultation.

The grazing regulations in the proposed rules apply only to the Navajo Partitioned Lands.

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process whenever feasible. Accordingly, interested parties may submit written comments, suggestions or objections regarding these proposed rules to the office identified in the "ADDRESS" section of the preamble. The primary author of this document is Robert Curley, P. O. Box 1060, Gallup, New Mexico 87305, telephone number 602/871-5151, Ext. 5106.

The Department of the Interior has determined that these proposed rules do not constitute a major federal action significantly affecting the quality of the human environment. Thus, no detailed environmental impact statement is required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (1988).

The information collection requirements contained in these rules do not require the approval of the Office of Management and Budget under 44 U.S.C. 3501-3520.

#### E.O. 12866 Statement

This rule has been reviewed under Executive Order 12866.

#### Regulatory Flexibility Act Statement

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601-612 (1988).

#### Takings Implication Assessments (E.O. 12630)

In accordance with E.O. 12630, the Department has determined that these proposed rules do not have significant takings implications.

#### List of Subjects in 25 CFR Part 161

Grazing lands, Indian lands, Livestock.

For reasons set forth in the preamble to this part, the Bureau of Indian Affairs proposes to add part 161 to title 25, chapter I of the Code of Federal Regulations as it appears below.

## 25 CFR PART 161—NAVAJO PARTITIONED LAND GRAZING REGULATIONS

### Sec.

- 161.01 Definitions.
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  - 161.03 Purpose.
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  - 161.05 How range units are established.
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  - 161.10 Eligibility and priorities for issuing grazing permits.
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  - 161.15 Kind and classes of livestock that may be grazed.
  - 161.16 How grazing fees will be assessed and collected.
  - 161.17 How permits may be assigned, modified, or cancelled.
  - 161.18 Establishing and administering special land uses.
  - 161.19 Livestock trespass.
  - 161.20 Impoundment and disposal of trespassing livestock.
  - 161.21 Controlling livestock diseases and parasites.
  - 161.22 Procedures for Navajo Nation concurrence.
  - 161.23 How to appeal decisions on grazing permits.
  - 161.24 Information Collection.
- Authority: 5 U.S.C. 301; 25 U.S.C. 2, 640d-640d31.

### § 161.01 Definitions.

As used in this part, terms shall have the meanings set forth in this section:

*Allocate* means to apportion grazing privileges, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock shall be grazed.

*Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: Sheep and Goats—one ewe, doe, buck or ram equals 0.20 AU; one sheep unit year long (SUYL) equals 0.20 Animal Unit Year Long; Horses and Mules—one horse, mule, donkey or burro equals 1.25 AU.

*Animal Unit Month* (AUM) means the amount of feed or forage required by an animal unit for one month. The conversion factors under the definition of animal unit apply. Thus, for sheep, one animal unit month is the amount of feed or forage required by five sheep in one month.

*Area Director* means the officer in charge of the Navajo Area Office for the Bureau of Indian Affairs (or his/her designee or authorized representative).

*BIA enumeration* means the list of persons living on and improvements located within the Former Joint Use Area obtained by interviews conducted in 1974 and 1975 by the Project Officer's staff.

*Carrying capacity* means the maximum stocking rate possible without inducing a downward trend in forage production, forage quality, or related resources.

*Class of animal* means the age and/or sex of an animal. Example: cow, calf; ewe, lamb; doe, kid; mare, colt; etc.

*Concurrence* means agreement by the Area Director and the Navajo Nation.

*Conservation practice* means a method of management that seeks to maintain and/or improve natural resources on a sustained yield basis.

*Former Joint Use Area* (FJUA) means the area established by the United States District Court for the District of Arizona in *Healing v. Jones*, 210 F. Supp. 125 (1962), *aff'd* 373 U.S. 758 (1963), that is inside the Executive Order area [Executive Order of December 16, 1882] but outside Land Management District 6, and that was divided between the Navajo Nation and the Hopi Tribe by the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona.

*Grazing Permit* means a revocable privilege granted in writing and limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term as used in this part shall include written authorizations issued to enable the crossing or trailing of domestic livestock across specified tracts or range units.

*Hopi Partitioned Land or HPL* means that portion of the Former Joint Use Area which was partitioned to the Hopi Tribe.

*Immediate family member* means any of the following:

- (1) The living spouse of a decedent who was a former permittee;
- (2) The children of the deceased if the spouse is not living; or
- (3) Siblings of the deceased if neither a spouse or children are living.

*Livestock inventory* means the original list developed by the Project Officer in 1976-77 of livestock owned by persons with a grazing permit or shared grazing permit, and having customary grazing use in the Former Joint Use Area under 25 CFR part 167 (formerly part 152).

*Management unit* means a subdivision of a range unit.

*Nation or Navajo Nation* means the Resources Committee of the Navajo

Nation Council, which has been delegated authority to exercise the powers of the Navajo Nation with regard to the range development and grazing management of the Navajo Partitioned Land.

*Navajo Partitioned Land or NPL* means that portion of the Former Joint Use Area which has been partitioned to the Navajo Nation.

*NPL Grazing Committee* means the District Grazing Committee established by the Navajo Nation that is responsible, in whole or in part, for the NPL (affected areas).

*Nonconcurrence* means disagreement between the Area Director and the Navajo Nation.

*Project Officer* means the Bureau of Indian Affairs official (formerly the Special Project Officer of the Bureau of Indian Affairs Administrative Office, Flagstaff, Arizona), to whom is delegated the authority of the Commissioner of Indian Affairs to act in matters regarding the Navajo Partitioned Land of the Former Joint Use Area.

*Range improvement* means:

- (1) Any structure or excavation to facilitate management of the range for livestock;
- (2) Any practice designed to improve the range condition or facilitate more efficient utilization of the range; or
- (3) Any modification resulting in an increase in the grazing capacity of the range.

*Range management plan* means a plan developed for the beneficial use of a range unit.

*Range unit or range allotment* means an area designated for the use of a prescribed number and kind of livestock under one plan of management.

*Resident* is a person who lives on the Navajo Partitioned Land full-time and previously utilized a customary use grazing permit under 25 CFR part 167 (formerly part 152).

*Secretary* means the Secretary of Interior or his/her designated representative.

*Settlement Act* means the Act of December 22, 1974, 25 U.S.C. 640d—640d—31.

*Special land use* means all land usage for purposes other than for grazing or pasture lands, for which permits, leases, or assignments are approved by the Area Director under Federal law, or by the Navajo Nation under the Navajo Tribal Code.

*Special management area* means an area for which a single management plan is developed and applied in response to special management objectives such as watersheds, fire hazard areas, or other similar concerns.

*Stocking rate* means the authorized number of Animal Units by range unit.

(“Carrying capacity” as used in the Settlement Act denotes stocking rate).

*Useable land area* means accessible land within a designated management area producing forage suitable for consumption by livestock.

#### **§ 161.02 Authority.**

It is within the general authority of the Secretary to protect Indian trust lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Under the Navajo-Hopi Settlement Act, as amended, 25 U.S.C. 640d—8 and 640d—18, the Secretary is authorized and directed to:

- (a) Adjust livestock grazing within the Former Joint Use Area to carrying capacity;
- (b) Restore the grazing potential of the NPL to the maximum extent feasible;
- (c) Survey, monument, and fence the partition boundary;
- (d) Protect the rights and property of individuals awaiting relocation;
- (e) Administer conservation practices, including grazing control and range restoration activities, on the Navajo Partitioned Lands.

#### **§ 161.03 Purpose.**

The regulations in this part are issued to implement the Secretary's responsibilities mandated by the Settlement Act. In general the regulations in this part are intended to aid in the preservation of forage, soil, and water resources on the Navajo Partitioned Land, and to aid in the recovery of those resources where they have deteriorated.

#### **§ 161.04 Scope.**

The grazing regulations in this part apply to the Navajo Partitioned Land within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Nation.

#### **§ 161.05 How range units are established.**

- (a) The Area Director, in consultation with the NPL Grazing Committee and the grazing permittees, and with the concurrence of the Navajo Nation, shall establish or, where it has been determined that modification will significantly improve the management of all areas, modify range units on the Navajo Partitioned Land to provide unified areas for which range management plans can be developed to improve and maintain soil and forage resources. Physical land features, watersheds, drainage patterns, vegetation, soil resident concentrations, problem areas, historical land use patterns, and comprehensive land use planning shall be considered in the determination of range unit boundaries.

(b) The Area Director may modify range unit boundaries to include small and/or isolated portions of Navajo Partitioned Land with contiguous Navajo tribal lands in order to develop more economical land management areas. These modifications shall be made in consultation with the affected NPL grazing permittees, the grazing permittees on adjoining areas, the NPL Grazing Committee, and the Navajo Nation.

(c) Permittees must obtain archaeological clearances before any fencing or other land disturbance. Pursuant to Public Law 93—531, as amended, no action taken pursuant to, in furtherance of, or as authorized by the regulations in this part shall be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969 as amended, 42 U.S.C. 4332.

#### **§ 161.06 Establishing and implementing Range Management Plans.**

(a) The Area Director shall confer with the Navajo Nation in planning conservation practices for the Navajo Partitioned Land. The Area Director shall develop range management plans in consultation with the NPL Grazing Committee and the grazing permittees residing in each range unit. After the Navajo Nation concurs with and the Area Director approves the range management plan, the implementation of the plan may begin immediately. The plan shall address, but shall not be limited to, the following issues:

- (1) Goals for improving vegetative productivity;
- (2) Incentives for carrying out the goals;
- (3) Stocking rates;
- (4) Grazing schedules;
- (5) Wildlife management;
- (6) Needs assessment for range and livestock improvements;
- (7) Schedule for operation and maintenance of existing range improvements and the opportunities for installing privately or cooperatively funded projects;
- (8) Cooperation in the implementation of range studies;
- (9) Control of livestock diseases and parasites;
- (10) Fencing or other structures necessary to implement any of the other provisions in the range management plan.

(b) Range management plans and actions shall require consultation with the affected grazing permittees.

(c) All range management plans, actions and decisions shall be submitted to the Navajo Nation for review and concurrence.

**§ 161.07 How range improvements are treated.**

Range improvements placed on the Navajo Partitioned Land shall be considered affixed to the land unless specifically exempted in the permit. No range improvement may be constructed or removed from Navajo Partitioned Land without the written consent of the Area Director and the Navajo Nation. All grazing permits shall state that the permittee is responsible for maintenance of range improvements specifically identified in the management plan.

**§ 161.08 How carrying capacity and stocking rate are established.**

(a) The Area Director, with the concurrence of the Navajo Nation, must prescribe the carrying capacity of each range unit by determining:

(1) The maximum number of each kind of livestock that can be grazed on the unit without damage to vegetation or related resources; and

(2) The season or seasons of use required to achieve the objectives of the land recovery program required by the Settlement Act.

(b) The stocking rate of each range or management unit shall be established by the Area Director, with the concurrence of the Navajo Nation, and shall be based on forage production, range utilization, the application of land management practices, and range improvements in place to achieve uniformity of grazing under sustained yield management principles on each range or management unit.

(c) The Area Director shall review the carrying capacity of the grazing units on a continuing basis and adjust the stocking rate for each range or management unit as conditions warrant.

(d) Any change in the stocking rate allowed in the grazing permits will be prorated on an equal percentage basis among the grazing permittees on the range or management unit.

**§ 161.09 Restrictions on grazing permits.**

Grazing use on range units is authorized only by permits granted under this part. A state brand only identifies the owner of the livestock, but does not authorize the grazing of any livestock within the NPL. Only a grazing permit issued pursuant to the regulations in this part authorizes the grazing of livestock within the NPL. Grazing permits shall be subject to the following restrictions:

(a) Grazing permits shall not be issued or subdivided for less than four animal units (20 sheep units);

(b) A grazing permit shall be issued in the name of one individual unless

otherwise approved by the NPL Grazing Committee and the Area Director;

(c) Grazing permits shall be issued for use in one range unit only; and

(d) Grazing permits may contain additional conditions authorized by Federal or Navajo Tribal laws.

**§ 161.10 Eligibility and priorities for issuing grazing permits.**

(a) *Eligibility.* Only those applicants who meet the following criteria are eligible to receive permits to graze livestock:

(1) Those who had valid grazing permits or shared grazing permits under an extended family group agreement on Navajo Partitioned Land under 25 CFR part 167 (formerly part 152) and whose permits were cancelled on October 14, 1973;

(2) Those who are listed in the 1974–1975 FJUA enumeration;

(3) Those who are current residents on Navajo Partitioned Land; and

(4) Those who do not presently hold a valid grazing permit in a land management district within the Navajo Indian Reservation.

(b) *Priorities.* Applicants who are eligible to receive a permit under paragraph (a) of this section shall be assigned priorities based on the following criteria:

(1) First priority shall go to heads of households currently over the age of 65.

(2) Second priority shall go to heads of households under the age of 65.

(3) In each priority class, eligible applicants who had shared grazing permits shall be equal to those who had their own grazing permits.

**§ 161.11 How grazing permits are allocated.**

(a) Initial allocation of the number of Animal Units authorized in each grazing permit shall be based on the number of Animal Units previously authorized in prior grazing permits and the authorized stocking rate on a given range unit.

(b) Grazing permit allocations shall vary from range unit to range unit depending on the stocking rate of each unit, the management plan, and the number of eligible grazing permittees in the unit.

(c) Any change in carrying capacity requiring adjustments to the stocking rate shall be prorated on an equal percentage basis to permittees on each range unit.

**§ 161.12 Provisions required in all grazing permits.**

(a) All grazing permits shall contain the following provisions:

(1) The permittee agrees he/she will not use, cause, or allow to be used any

part of the permitted area for any unlawful conduct or purpose.

(2) The permit authorizes no privilege other than grazing use.

(3) No person is allowed to hold a grazing permit in more than one range unit of the Navajo Partitioned Land.

(b) Any other special provision which, in the discretion of the Area Director and with the concurrence of the Navajo Nation, is necessary to protect the land and resource may be added to the permit.

**§ 161.13 Procedures for issuing permits.**

The Area Director shall issue grazing permits only to individuals that meet the eligibility requirements of § 161.10

(a). Responsibilities for the initial issuance of grazing permits shall be as follows:

(a) The Area Director shall develop a complete list of all prior permit holders, including shared permittees under an extended family agreement, who had grazing permits cancelled on the NPL and HPL and who now reside on the NPL. This list shall be provided to the NPL Grazing Committee for its review. The Area Director shall also provide the NPL Grazing Committee with his/her determination of the carrying capacity and stocking rate for each range unit within the NPL.

(b) Within 45 days of receipt, the NPL Grazing Committee shall review the list of potential permittees provided by the Area Director for a range unit, and, according to the eligibility and priority criteria set forth in § 161.10, and make recommendations to the Navajo Nation for the granting of grazing permits on the range unit. The Committee shall also make a recommendation for initial permit allocation of animal units for each permit application.

(c) If the NPL grazing committee fails to make its recommendation to the Navajo Nation within 45 days after receiving the list of potential permittees for a range unit and the determination of stocking rate, then the Area Director shall submit his/her recommendations to the Navajo Nation.

(d) The Navajo Nation shall review and concur with the list of proposed permit grantees, including the initial permit allocation of animal units, and then forward a final list to the Area Director for the issuance of grazing permits.

**§ 161.14 Duration of grazing permits.**

Each new grazing permit shall be valid until January 1 of the year following its issuance. After its initial issuance, each grazing permit is valid for one year beginning on January 1. All grazing permits that are being used by

permittees shall be automatically renewed annually until cancelled. If a grazing permit is not used by the permittee for a one year period, the Area Director may cancel the permit.

**§ 161.15 Kind and classes of livestock that may be grazed.**

Unless otherwise determined by the Area Director for conservation purposes and specified in the grazing permit, the permittee may determine the kind and class of livestock that may be grazed on range units.

**§ 161.16 How grazing fees will be assessed and collected.**

If requested by the Navajo Nation, the Area Director shall assess and collect grazing fees under the following procedures:

(a) Fees are to be paid in advance, due and payable by January 1, with a 30-day grace period thereafter;

(b) Fees shall be collected by the Area Director and thereafter transferred to the Navajo Nation to be set aside for range management purposes in grazing management areas;

(c) All grazing permittees who fail to pay the prescribed fees by January 1, or within the 30-day grace period, shall be subject to a reasonable late charge set by the Navajo Nation;

(d) If payment is not received after 90 days the grazing permit shall be subject to cancellation.

**§ 161.17 How permits may be assigned, modified, or cancelled.**

(a) Grazing permits may be assigned, sub-permitted or transferred only as provided in this section. Permits may only be inherited or assigned as a single permit, with the approval of the Navajo Nation and the Area Director, to another immediate family member who has retained full time residency on the NPL.

(b) The Area Director shall notify the Navajo Nation before taking any adverse actions. The Area Director may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 60 days written notice to a grazing permittee of a violation of the permit or special conditions affecting the land or the safety of the livestock thereon, including, but not limited to, flood, disaster, drought, contagious diseases; or for non-payment of grazing fees or violation of these regulations; or violation of Federal or tribal laws. Except in the case of extreme necessity, specified in the notice, cancellation or modification shall be effective on the next anniversary date of the grazing permit following the date of notice.

**§ 161.18 Establishing and administering special land uses.**

The Navajo Nation and the Area Director may establish special land uses, including leases, withdrawals, and land assignments. If a special land use is inconsistent with issued grazing permits or range management plans, the special use will govern and will require the amendment of the grazing permits and range management plans.

**§ 161.19 Livestock trespass.**

The owner of any livestock grazing in trespass on the Navajo Partitioned Land is liable for a minimum civil penalty of one dollar per head per day for each cow, bull, horse, mule, or donkey and twenty-five cents per day for each goat or sheep in trespass, together with the replacement value of the forage consumed and a reasonable value for damages to property injured or destroyed. The Area Director may collect penalties and damages and seek injunctive relief when appropriate. All payments for penalties and damages shall be credited to the Navajo Nation's special deposit account. The following acts are prohibited:

(a) Grazing or driving livestock across the Navajo Partitioned Land without an approved grazing or crossing permit;

(b) Allowing livestock to drift and graze on the NPL without an approved permit;

(c) Grazing livestock in an area closed to grazing for that class of livestock;

(d) Grazing livestock upon any land that the Area Director has withdrawn from grazing use to protect it from damage, after notice of the withdrawal is received; and

(e) Grazing more in number or kinds of livestock than are authorized by an appropriate grazing permit.

**§ 161.20 Impoundment and disposal of trespassing livestock.**

(a) The Area Director shall notify the NPL Grazing Committee of any livestock trespass on the NPL.

(b) After the NPL Grazing Committee has been notified or otherwise becomes aware of the existence of the livestock trespass, a five day period shall be allowed for the NPL Grazing Committee to resolve the livestock trespass with the grazing permittee or livestock owner before formal trespass action is taken.

(c) If trespassing livestock within a range unit are not removed within the periods prescribed in this section, the Area Director shall impound and dispose of it as follows:

(1) If the Area Director knows of the class of livestock and the name and address of the owners, he/she may impound the livestock any time five

days after mailing by certified mail or having delivered to the owners or their agent a Notice of Intent to Impound.

(2) When the Area Director does not know of the number and class of livestock or the name and address of the owner, he/she shall impound the livestock anytime 15 days after the date of a General Notice of Intent to Impound is:

(i) Published in the local newspaper;

(ii) Posted at the nearest chapter house or in one or more local trading posts; and

(iii) Announced in English and in Navajo by a local radio station.

(3) The Area Director may impound trespassing livestock owned by a person given notice under paragraphs (c)(1) and (2) of this section without further notice within the six-month period immediately following the effective date of the notice.

(4) Following the impoundment of trespassing livestock, a Notice of Sale of Impounded Livestock shall be published in a local newspaper, posted at the nearest chapter, posted in one or more local trading posts, and announced in English and in Navajo by a local radio station. The notice shall describe the livestock and specify the date, time, and place of sale. The date set shall be at least five days after the publication, posting, and announcement of the notice.

(5) The owner or his or her agent may redeem the livestock any time before the time set for this sale by submitting proof of ownership and paying for the expenses incurred in gathering, impounding, and feeding or pasturing the livestock and any trespass fees and damages assessed under § 161.19 and/or other damages caused by the animal.

(6) The Area Director shall return erroneously impounded livestock to the residence of the rightful owner and shall waive all expenses.

(7) Livestock not redeemed before the time fixed for their sale shall be sold at a public sale or auction to the highest bidder, provided the bid is at or above the minimum amount set by the Area Director and the Navajo Nation.

(8) The proceeds of any sale of impounded livestock shall be applied in the following order:

(i) Toward the payment of all expenses incurred by the Area Director in gathering, impounding and feeding or pasturing the livestock; and

(ii) Toward the payment of any penalties or damages assessed pursuant to § 161.19.

(9) Any proceeds remaining after payment of the two items in paragraphs (c)(8) (i) and (ii) of this section and not claimed within one year from the date

of sale shall be credited to a special fund for the Navajo Partitioned Land.

**§ 161.21 Controlling livestock disease and parasites.**

Whenever livestock are exposed to or become infected with contagious or infectious diseases or parasites the owner must treat the livestock and restrict their movement in accordance with applicable laws.

**§ 161.22 Procedures for Navajo Nation concurrence.**

(a) Subject to the Secretary's authority and except where indicated otherwise, the Navajo Nation has the right to consult with the Area Director and concur in the establishment of range units, range management plans, and special management areas.

(b) For any action requiring the concurrence of the Navajo Nation, the following procedures shall apply:

(1) Unless a longer time is specified in a particular section of the regulations in this part, or unless the Area Director grants an extension of time, the Navajo Nation shall have 35 days to review and concur with the proposed action.

(2) If the Navajo Nation concurs in writing with all or part of the Area Director's proposed action, then the action or a portion of it may be immediately implemented.

(3) If the Navajo Nation does not concur with all or part of the proposed action within 35 days the Area Director shall submit to the Navajo Nation a written declaration of non-concurrence. The Area Director shall then notify the Navajo Nation in writing of a formal hearing to be held not sooner than 30 days from the date of the non-concurrence declaration.

(4) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. The Area Director shall take minutes of the hearing. Following the hearing, the Area Director may amend, alter, or otherwise change his/her proposed action. If, following a hearing, the Area Director alters or amends portions of his/her proposed plan of action, he/she shall submit the altered or amended portions of the plan to the Navajo Nation for its concurrence.

(5) If the Navajo Nation fails or refuses to give its concurrence to the proposal at the hearing, the Area Director may implement the proposal only after issuing a written order, based upon findings of fact, that the proposed action is necessary to protect the land pursuant to his/her responsibilities under the Settlement Act.

**§ 161.23 How to appeal decisions on grazing permits.**

Appeals of decisions issued under this part will be in accordance with procedures in 25 CFR part 2.

**§ 161.24 Information collection.**

The information collection requirement(s) contained in the regulations in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501-3520.

Editorial Note: This document was received at the Office of the Federal Register on October 24, 1995.

Dated: February 3, 1995.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD 09-95-029]

#### Special Local Regulations; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise its list of annual marine events which occur within the Ninth Coast Guard District. Publication of this list in part 100 of the Code of Federal Regulations will establish permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is being taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. The list reflects the approximate dates and locations of each annual marine event.

**DATES:** Comments must be received on or before December 18, 1995.

**ADDRESSES:** Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand

delivered to this address. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will also be published in local notices to mariners. To be placed on the mailing list for such notices, write to Commander (oan), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3990.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD09-95-029] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

##### Drafting Information

The drafters of these regulations are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch and Lieutenant Charles D. Dahill, Project Attorney, Ninth Coast Guard District Legal Office.

##### Discussion of Proposed Regulations

If adopted, this rulemaking will update an existing list of anticipated annual events. Each year various public and private organizations sponsor marine events on the navigable waters of the United States within the Ninth Coast Guard District. These events include slow moving boat parades, sailboat races, high speed hydroplane races, fireworks displays, and other water related events. The listed events